

HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION NO.757 OF 1994.

Date of decision: 16.11.1995.

For approval and signature

The Honourable Mr. Justice S.M. Soni

and

The Honourable Mr. Justice R.R. Jain

Mr.N.S. Sheth, advocate for applicant.

Mr. T.H. Sompura, APP for respondents.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.M. Soni & R.R. Jain, JJ.

November 16, 1995.

Oral judgment (Per Soni, J.)

Applicant has filed this application for taking action against respondent No.5 for having committed breach of the order passed by this court (Coram: S.D.Dave, J>) on 25.5.1992 in Miscellaneous Criminal Application No.1847 of 1992. It is alleged that despite that order respondent No.5 filed the chargesheet against the

applicant and has committed contempt of this court. The interim relief which was granted by this court reads as under:

"Pending the hearing and final disposal of this application, the Hon'ble Court may be pleased to grant stay of further proceedings in Crime Register Nos.174/92 and 214/92 on the file of Madhavpura Police Station filed by the respondent No.2 and 3 against the petitioner in Madhavpura Police Station."

On rule being served, respondent No.5 has filed affidavit in reply on 2.3.1994 and 23.3.1994.

Short question that arises in this case is whether when further proceedings in a Criminal Register is stayed, filing of chargesheet would amount to further proceedings and amounting to contempt of court or not. It is nowhere stated in the application that after 25.5.1992 concerned Investigating Officer of that case has recorded any further statement or not. It may happen that no further proceedings or investigation have taken place and on the material already collected till date of the order, chargesheet may be required to be filed. In our opinion, filing of chargesheet is not further proceedings of the Crime Register Case for the simple reason that in certain cases, particularly wherein nonbailable offence is involved, not filing chargesheet within a particular time limit entitles the accused of that case to grant of bail. It is never the intention of the Legislature or of the Court to create a situation to allow an accused of nonbailable case to come out by default, particularly when that default is created by the order of the court. There cannot be an order of

the court which may create advantage in favour of an accused of a nonbailable case. Therefore, in our opinion, in the absence of any material on the record to show that anything further towards the investigation was done by the concerned officer after grant of stay by this court, simply filing of chargesheet would not amount to further proceedings in the matter.

That apart, the officer concerned has filed affidavit wherein it has been specifically stated that the same has been done inadvertently and has tendered unconditional apology for the same. Filing of the chargesheet was through oversight, without any slightest intention to flout the order passed by this court. In another

affidavit it is further stated that he has instructed concerned APP not to proceed further in the matter and brought to his notice the order passed by this court. This shows and suggests bona fides on the part of the concerned police officer.

In view of the above observations, we are of the opinion that the act of filing chargesheet was neither wilful nor can it be said to be disobedience of the order of this court coming within the definition of clause (b) of Section 2 of the Contempt of Courts Act.

In this view of the matter, the petition is not maintainable and is hereby dismissed. Rule discharged. No order as to costs.